



**STATE OF NEW JERSEY
OFFICE OF THE ATTORNEY GENERAL
DEPARTMENT OF LAW & PUBLIC SAFETY
DIVISION ON CIVIL RIGHTS
DCR DOCKET NO.: HB31RO-60619
HUD NO.: 02-09-0491-8**

**FAIR HOUSING COUNCIL OF NORTHERN
NEW JERSEY; LEE PORTER, EXECUTIVE
DIRECTOR;
AND
CHINH Q. LE, ESQ., DIRECTOR, NEW
JERSEY DIVISION ON CIVIL RIGHTS,**

COMPLAINANTS,

V.

CARMELO AND ROSA LUCIANO,

RESPONDENTS.

FINDING OF PROBABLE CAUSE

Consistent with a Verified Complaint filed on April 14, 2009, and an Amendment to the Verified Complaint, the above-named respondents have been charged with unlawful discrimination within the meaning of the New Jersey Law Against Discrimination (N.J.S.A. 10:5-1 et seq.) and specifically within the meaning of N.J.S.A. 10:5-4 and 10:5-12(g), based on race.

Chinh Q. Le (Director) is the Director of the Division on Civil Rights and, in the public interest, has intervened as a Complainant in this matter pursuant to N.J.A.C. 13:4-2.2(e).

SUMMARY OF COMPLAINT

Complainants, Fair Housing Council of Northern New Jersey and Lee Porter, its Executive Director, contend that Respondents, Carmelo and Rosa Luciano, discriminated against rental applicants for apartments on the basis of race. Complainants alleged that in November 2008, Andre Daniels and Alicia Arnone visited the offices of Fair Housing Council of New Jersey and reported that Respondents refused them rental of an available apartment because of race.¹ Complainants further alleged as a result of Daniels and Arnone's complaint, they arranged and conducted telephone

¹ Andre Daniels and Alicia Arnone also filed separate complaints with the Division, which have been consolidated by order (docket number HB31RO-60599).

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and in-person tests at that property on November 18, 22, 23 and 24, 2008, and that the testers were differentially treated based upon race.

SUMMARY OF RESPONSE

Respondents denied discriminating against its rental applicants for any unlawful reason, including race.

BACKGROUND

Chinh Q. Le (Director) is the Director of the Division on Civil Rights and, in the public interest, has intervened as a complainant in this matter pursuant to N.J.A.C. 13:4-2.2 (e).

Complainant Fair Housing Council of Northern New Jersey (Fair Housing Council) is a non-profit corporation located in Hackensack, Bergen County, New Jersey. Among other things, Fair Housing Council provides housing and financial counseling to its clients, assists them in finding available housing, provides educational assistance to consumers and real estate professionals, and promotes equal opportunity in the rental and sale of housing. As part of its mission, Fair Housing Council conducts tests of housing providers to ensure fair housing practices. Complainant Lee Porter (Porter) is Fair Housing Council's Executive Director.

Respondents Carmelo and Rosa Luciano own two buildings located at 236 and 238 Harrison Avenue in Lodi, New Jersey. Together, the buildings contain a commercial bakery and eight rental apartments.

SUMMARY OF INVESTIGATION

The investigation revealed sufficient evidence to support a reasonable suspicion that Respondents discriminated against applicant-testers based upon race, and that Complainants were harmed by Respondents' practices.

The investigation disclosed that on or about November 16, 2008, Andre Daniels and Alicia Arnone visited Complainants' office and made a complaint that Respondents refused to rent them an available apartment because of race. (Daniels is black and Arnone is white.) Daniels and Arnone reported that on November 10, 2008, Respondent Carmelo Luciano showed them a one-bedroom apartment which was available for rental. Daniels and Arnone further reported that Respondent Carmelo Luciano accepted their check for \$750 as a deposit to hold the apartment and gave them a move-in date of November 16, 2008. Daniels and Arnone reported that when they returned to the apartment on November 16, 2008, with a van full of belongings and family on hand to help them move in, Respondent Carmelo Luciano told them his wife, Respondent Rosa Luciano, had rented the apartment to someone else without his knowledge and he returned the \$750 deposit.

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Complainant Fair Housing Council maintains staff that counsels its clients on obtaining available housing and conducts outreach to prevent discrimination. It also coordinates and conducts tests when it suspects that housing providers may be engaging in unlawful discrimination. It conducts these tests by employing per diem trained testers to play the role of individuals seeking housing.

Complainant Fair Housing Council reported that it had no plans to test Respondents' rental practices until Daniels and Arnone came to it with their complaint. Once it received the complaint, it arranged for testing and hired testers to conduct the tests. As a result of the tests it conducted, Complainants Fair Housing Council and Porter both filed a complaint on their own behalf with the U.S. Department of Housing and Urban Development (HUD) and assisted Daniels and Arnone in filing separate complaints of their own. HUD subsequently referred all three related complaints to the Division pursuant to its worksharing agreement with the Division.

Complainant Fair Housing Council informed the Division's investigator that it conducted telephone and in-person tests at the property on November 18, 22, 23 and 24, 2008. During the investigation, Complainant Fair Housing Council submitted copies of its test reports. The reports indicated that on November 18, 2008, a white male and white female tester contacted Respondents by telephone to inquire about the same one-bedroom apartment Daniels and Arnone had sought. According to the reports, both testers were told the apartment was still available and both were given appointments to see it on November 22, 2008. The test reports further indicated that on that date, the white male tester arrived at the property at his scheduled time and was shown the apartment by Respondent Carmelo Luciano. The white female tester indicated in her report that she arrived at the property at her appointed time, which was less than two hours after the white male tester left the property, accompanied by a black male tester posing as her husband. According to the test report no one was there to meet them. The report indicated that the testers walked around the property and were told by a man there to try the office next door. The testers reported that after no one answered the office door, the black male tester called Respondents' telephone number and told the person who answered that they were there for a scheduled appointment to see the apartment. The report indicated that the telephone connection was broken and no one came to show them the apartment.

According to the test reports, the white male tester called Respondent Carmelo Luciano on November 23, 2008, and made an appointment to see the apartment for a second time. The report indicated that an appointment was made for 4:00 p.m. on November 24, 2008. According to the test reports, the black male tester also called Respondent Carmelo Luciano and requested another appointment for him and his "wife" (the white female tester) to see the apartment. His report indicated that Respondent Carmelo Luciano told him to be at the apartment within an hour and call him when they got there. The report stated that there was no one at the apartment or office when they arrived 45 minutes later within the time frame requested by Respondent Carmelo Luciano. The report also stated that the testers called Respondent Carmelo Luciano twice from the property, and their calls were never returned.

During the investigation the Respondents claimed that they could not recall the testers, so they were unable to provide any specific information with respect to their alleged treatment of the testers. However, they denied that they discriminated against any rental applicants based on race.

ANALYSIS

At the conclusion of the investigation, the Division is required to make a determination whether “probable cause” exists to credit a complainant’s allegation of discrimination. Probable cause has been described under the New Jersey Law Against Discrimination (LAD) as a reasonable ground for suspicion supported by facts and circumstances strong enough to warrant a cautious person to believe that the law was violated and that the matter should proceed to hearing. Frank v. Ivy Club, 228 N.J. Super. 40, 56 (App. Div. 1988), rev’d on other grounds, 120 N.J. 73 (1990), cert. den., 111 S.Ct. 799. A finding of probable cause is not an adjudication on the merits but, rather, an “initial culling-out process” whereby the Division makes a preliminary determination of whether further Division action is warranted. Sprague v. Glassboro State College, 161 N.J. Super. 218, 226 (App. Div. 1978). See also Frank v. Ivy Club, supra, 228 N.J. Super. at 56. In making this decision, the Division must consider whether, after applying the applicable legal standard, sufficient evidence exists to support a colorable claim of discrimination under the LAD.

An organization such as Complainant Fair Housing Council has standing to bring a complaint in its own name when it is required to divert its efforts and resources to address an incident of discrimination, or if its mission is frustrated by unlawful discrimination. Complainant Fair Housing Council here reported that one its goals is to promote equal opportunity in the rental of housing, and that it accomplishes this by counseling clients on obtaining housing and conducting outreach to prevent discrimination. It also will arrange for and conduct tests when it believes that a housing provider is engaging in unlawful discrimination. In this instance, after receiving the complaint from Daniels and Arnone that they believed Respondents denied them an apartment because of race, Complainant conducted tests at the property in question.²

The testing reports suggested that Respondent Carmelo Luciano made himself available to potential white renters but did not keep appointments with black potential renters or their white significant others. The testing completed by Complainant Fair Housing Council substantiated the complaint it received of Respondents’ reluctance to rent to black applicants in violation of N.J.S.A. 10:5-4 and N.J.S.A. 10:5-12 (g).

The investigation revealed that Complainant Fair Housing Council had no plans to test Respondents’ rental practices until Daniels and Arnone visited their office to make a complaint. At

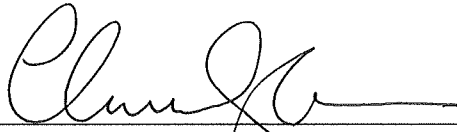
² To the extent that Complainant Porter, the organization’s Executive Director, is listed in the caption of this complaint as well, the Division believes that her participation in only a nominal capacity is permissible, as she oversees and directs the operations of Complainant Fair Housing Council.

that point, Complainant diverted its resources from other activities by arranging for tests and paying per diem testers to corroborate the report by Daniels and Arnone of Respondents' alleged discriminatory practices. Accordingly, Complainant Fair Housing Council has made a sufficient showing of harm to establish standing.

FINDING OF PROBABLE CAUSE

It is, therefore, determined and found that Probable Cause exists to credit the allegations of the complaint.

04/20/2011
Date


Chinh Q. Le, Esq., Director
Division on Civil Rights
State of New Jersey
Office of the Attorney General
Department of Law and Public Safety